

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

In re LIBORIOUS IHECHERE AGWARA,

Debtor.

LIBORIUS IHECHERE AGWARA,

Appellant,

vs.

KELECHI AGWARA and VICTORIA L.

NELSON,

Appellees.

Bankr. No. 13-bk-17576-BTB

2:15-cv-01544-RCJ

OPINION AND ORDER

This case is an appeal of a final order of the Bankruptcy Court granting Appellee Kelechi Agwara's motion to approve a family court divorce decree and comfort order. Appellee also moves the Court to expunge lis pendens (ECF No. 19), which Appellant moves to strike (ECF No. 21).

I. FACTS AND PROCEDURAL HISTORY

On May 23, 2012, Appellant Liborius Ihechere Agwara (“Appellant”) filed a complaint for divorce in state court. On September 4, 2013, Appellant filed a voluntary bankruptcy petition under Chapter 13. (See Pet., ECF No. 1 in Bankr. No. 13-17576). Appellant and Appellee Kelechi Agwara (Appellant’s ex-wife) (“Appellee”) filed a stipulation for relief from the

1 automatic stay so the Family Court could adjudicate family law issues, including a division and
2 award of property and assets that were property of the estate. (*See* Stipulation, ECF No. 59 in
3 Bankr. No. 13-17576). The Bankruptcy Court approved the stipulation on December 3, 2013.
4 (*See* Order, ECF No. 67 in Bankr. No. 13-17576). On December 4, 2013, the Bankruptcy Court
5 granted Appellant's motion to convert the case to a Chapter 11 case. (*See* Order, ECF No. 70 in
6 Bankr. No. 13-17576). On May 6, 2014, the Bankruptcy Court appointed Victoria Nelson as a
7 Chapter 11 trustee for Appellant's bankruptcy estate. (*See* Order, ECF No. 183 in Bankr. No. 13-
8 17576). On July 14, 2014, the Bankruptcy Court granted Nelson's motion to convert the case to a
9 Chapter 7 case. (*See* Order, ECF No. 219 in Bankr. No. 13-17576).

10 On March 25, 2015, the Family Court entered a divorce decree awarding to Appellant a
11 net value of assets totaling \$1,820,446.00 and to Appellee \$307,965.00, with an equalization
12 award of \$756,240.00 to Appellee. (Divorce Decree, 9-11, ECF No. 376-1 in Bankr. No. 13-
13 17576). On July 1, 2015, the Bankruptcy Court approved a stipulation between Trustee Nelson
14 and Appellee requiring Nelson to abandon the bankruptcy estate's interest in the property
15 awarded to Appellee in the divorce decree, including value Appellant has claimed as exempt
16 from the estate. (*See* Order, ECF No. 394 in Bankr. No. 13-17576). On July 30, 2015, the
17 Bankruptcy Court granted Appellee's Motion for Bankruptcy Court Approval of the Family
18 Court Divorce Decree and Comfort Order to Collect Upon Exempt and Abandoned Assets. (*See*
19 Order, ECF No. 479 in Bankr. No. 13-17576). The order required Appellant to turn over the
20 abandoned property, including any exempt value, to Appellee. (*Id.*). Appellant filed an appeal of
21 that order in this Court on August 12, 2015. (*See* Notice of Appeal, ECF No. 1; ECF No. 505 in
22 Bankr. No. 13-17576).

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1 **II. BANKRUPTCY APPEAL**

2 **A. Standard of Review**

3 A bankruptcy court’s conclusions of law, including its interpretations of the bankruptcy
4 code, are reviewed de novo, and its factual findings are reviewed for clear error. *See Blausey v.*
5 *U.S. Trustee*, 552 F.3d 1124, 1132 (9th Cir. 2009). A reviewing court must accept the
6 bankruptcy court’s findings of fact unless it is left with the definite and firm conviction that a
7 mistake has been committed. *See In re Straightline Invs., Inc.*, 525 F.3d 870, 876 (9th Cir. 2008).

8 **B. Analysis**

9 The Court affirms the Bankruptcy Court’s order requiring Appellant to turn over to
10 Appellee the property awarded to her in the divorce decree. In his opening brief, Appellant
11 essentially makes three arguments for reversing the Bankruptcy Court’s order: (1) the
12 Bankruptcy Court failed to determine whether the debts in the divorce decree were non-
13 dischargeable; (2) the Bankruptcy Court erred by approving the divorce decree, including
14 requiring Appellant to transfer to Appellee exempt and abandoned assets; and (3) the Bankruptcy
15 Court “[c]reated a superpriority class of creditor consisting of one Creditor—Kelechi Agwara,”
16 (Appellant’s Opening Br., 9–10, ECF No. 9).

17 **1. Determination of Dischargeability**

18 Appellant argues the Bankruptcy Court’s order should be reversed because the Court
19 failed to determine whether the specific debts in the divorce decree were non-dischargeable. The
20 Bankruptcy Court was not required to make a debt-specific dischargeability determination
21 because the bankruptcy code clearly makes debt from a divorce decree non-dischargeable:

22 A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title
23 does not discharge an individual debtor from any debt . . . to a . . . former spouse .
24 . . . incurred by the debtor in the course of a divorce or separation or in connection
with a separation agreement, divorce decree or other order of a court of record, or

1 a determination made in accordance with State or territorial law by a
2 governmental unit.

3 11 U.S.C. § 523(a)(15). Appellant owes a debt to his former spouse as part of a divorce decree
4 issued by a state court in accordance with state law. The Bankruptcy Court did not err on this
5 issue.

6 **2. Approval of the Divorce Decree**

7 Appellant argues the Bankruptcy Court erred by approving the divorce decree, including
8 requiring Appellant to transfer to Appellee exempt and abandoned assets. He also argues that
9 “the Trustee has no role to play regarding exempt assets.” (Appellant’s Opening Br., 15). The
10 Bankruptcy Court did not err by approving the divorce decree. The Court lifted the automatic
11 stay so the Family Court could adjudicate the divorce and property division. The Family Court
12 then awarded to Appellee the property at issue here. The Bankruptcy Court then enforced its own
13 ruling—that the Family Court could adjudicate the divorce and property division—by approving
14 the divorce decree. *See* 28 U.S.C. § 1651 (“The Supreme Court and all courts established by Act
15 of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions
16 and agreeable to the usages and principles of law.”).

17 To facilitate its approval of the divorce decree, the Bankruptcy Court then approved the
18 stipulation requiring the trustee to abandon the bankruptcy estate’s interest in the property
19 awarded to Appellee in the divorce decree. Nothing prevents the Bankruptcy Court from using
20 an abandonment order or the trustee’s services to carry out the Court’s duties. *See Catalano v.*
21 *C.I.R.*, 279 F.3d 682, 687 (9th Cir. 2002) (“the bankruptcy court may issue an abandonment
22 order in a bankruptcy proceeding that involves issues other than abandonment, such as automatic
23 stay litigation”). Abandoning the assets identified in the divorce decree freed those assets from
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1 claims by other creditors, allowing the Court to enforce the divorce decree which created for
2 Appellant non-dischargeable debt.¹

3 Appellant argues the Bankruptcy Court should not have turned over to Appellee the
4 exempt or abandoned assets because those assets return to him as the debtor. Although exempt
5 and abandoned assets return to the debtor, here the Bankruptcy Court enforced the state divorce
6 decree which required those assets, including those exempted and abandoned, to be awarded to
7 Appellee, in fulfillment of Appellant's non-dischargeable debt.² Appellant received full due
8 process in state court. He is not challenging the validity of the divorce decree. The Bankruptcy
9 Court rightly "avoid[ed] incursions into family law matters" by approving the Family Court's
10 decree. *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985) ("It is appropriate for bankruptcy

11 ¹ Appellant argues the Bankruptcy Court erred by transferring the abandoned property to his ex-
12 wife instead of to pre-petition creditors. In reality, the Court was simply enforcing the divorce
13 decree. Further, Appellant likely does not have standing to raise this argument on appeal. "To
14 have standing to appeal a decision of the bankruptcy court, an appellant must show that it is a
15 person aggrieved who was directly and adversely affected pecuniarily by an order of the
16 bankruptcy court." *In re Popp*, 323 B.R. 260, 265 (B.A.P. 9th Cir. 2005) (quoting *McClellan*
17 *Fed. Credit Union v. Parker (In re Parker)*, 139 F.3d 668, 670 (9th Cir. 1998) (internal
18 quotations omitted). "A 'person aggrieved' is someone whose interest is directly affected by the
19 bankruptcy court's order, either by a diminution in property, an increase in the burdens on the
20 property, or some other detrimental effect on the rights of ownership inherent in the property."
21 *Id.* (quoting *In re Fondiller*, 707 F.2d 441, 442-43). Although Appellant has standing to appeal
22 the order as a whole, he is not directly or adversely affected by whether Appellee has priority to
23 obtain the estate's assets before other creditors. Only creditors, not the debtor, have a pecuniary
24 interest in a dispute regarding priority, especially when a trustee is appointed to manage the
estate.

² Appellant quotes *In re Graziadei*, 32 F.3d 1408 (9th Cir. 1994) to argue the Bankruptcy Court
should not have turned over the exempted portion of his "homestead" to his ex-wife. Although
the Ninth Circuit held that "a bankruptcy court has no jurisdiction over homestead property and
that such property cannot be administered by the bankruptcy court," *id.* at 1410 (quotations
omitted), the Court also noted that *In re Graziadei* involved payments to an attorney for fees and
costs rather than to an ex-spouse. *Id.* at 1410, n.4. It further noted that "the Nevada Supreme
Court held that a debtor is barred from using the homestead exemption as a defense against
making support payments to an ex-spouse" because "the homestead exemption's very purpose
was to support *family members* of the debtor." *Id.* at 1410 (citing *Breedlove v. Breedlove*, 691
P.2d 426 (1984)) (emphasis in original). The same rationale applies to the property in this case,
which Appellant owes to his ex-spouse.

1 courts to avoid incursions into family law matters ‘out of consideration of court economy,
2 judicial restraint, and deference to our state court brethren and their established expertise in such
3 matters.’” (quoting *In re Graham*, 14 B.R. 246, 248 (Bankr. W.D. Ky. 1981))). The Bankruptcy
4 Court did not err in approving the transfer of property required by the divorce decree, including
5 the exempt and abandoned assets.

6 **3. Superpriority Class**

7 Appellant likely has no standing to raise this issue on appeal.³ Even if he does, his
8 argument fails. The Bankruptcy Court did not create a superpriority class favoring Appellee;
9 rather, the Court merely approved the divorce decree, giving effect to a state court judgment. As
10 described above, the Court’s approval of the divorce decree was valid and proper.

11 The Bankruptcy Court did not err by granting Appellee Kelechi Agwara’s Motion for
12 Bankruptcy Court Approval of the Family Court Divorce Decree and Comfort Order to Collect
13 Upon Exempt and Abandoned Assets. This Court affirms the order.

14 **III. MOTION TO EXPUNGE LIS PENDENS**

15 Appellee offers evidence that Appellant has recorded lis pendens against three properties
16 awarded to her in the divorce decree. She moves the Court to expunge lis pendens as to those
17 properties (ECF No. 19). Appellant moves the Court to strike Appellee’s motion as a fugitive
18 document (ECF No. 21).

19 The Court denies the motion to expunge lis pendens because the Court does not have
20 jurisdiction to hear it. District courts have jurisdiction to hear appeals from “final judgments,
21 orders, and decrees” of the bankruptcy court pursuant to 28 U.S.C. § 158(a)(1), as well as certain
22 interlocutory orders described in 28 U.S.C. § 158(a)(2). With this motion, Appellee is not

23
24 ³ See Footnote 1.

1 appealing any order of the bankruptcy court. Moreover, this case involves only the appeal of the
2 order approving the divorce decree. The Court denies the motion to expunge lis pendens, and it
3 denies the motion to strike as moot.

4 **CONCLUSION**

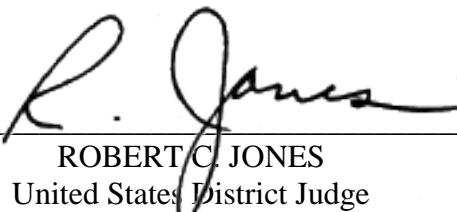
5 IT IS HEREBY ORDERED that the order of the Bankruptcy Court is AFFIRMED, and
6 the Clerk shall close the case.

7 IT IS FURTHER ORDERED that the motion to expunge lis pendens (ECF No. 19) is
8 DENIED.

9 IT IS FURTHER ORDERED that the Motion to Strike (ECF No. 21) is DENIED as
10 moot.

11 IT IS SO ORDERED.

12 DATED: March 30, 2016.

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14 ROBERT C. JONES
15 United States District Judge

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